

(f) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities.

(g) Failure to return a grant closeout package or outstanding advances within 90 days after the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted.

(h) Failure to submit required reports.

(i) Failure to properly report and dispose of Government property as instructed by the Department.

(j) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand.

(k) Failure to ensure that a subgrantee complies with applicable audit requirements, including OMB Circular A-133 audit requirements specified at 20 CFR 667.200(b) and § 641.821.

(l) Failure to audit a subgrantee within the period required under § 641.821.

(m) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgment of the Grant Officer, the disallowances are egregious findings.

(n) Failure to establish a mechanism to resolve a subgrantee's audit in a timely fashion.

§ 641.450 Are there responsibility conditions that alone will disqualify an applicant?

(a) Yes, an applicant may be disqualified if either of the first two responsibility tests listed in § 641.440 is not met.

(b) The remainder of the responsibility tests listed in § 641.440 require a substantial or persistent failure (for 2 or more consecutive years).

(c) The second responsibility test addresses "fraud or criminal activity of a significant nature." The existence of significant fraud or criminal activity will be determined by the Department and typically will include willful or grossly negligent disregard for the use, handling, or other fiduciary duties of Federal funding where the grantee has no effective systems, checks, or safeguards to detect or prevent fraud or criminal activity. Additionally, significant fraud or criminal activity will

typically include coordinated patterns or behaviors that pervade a grantee's administration or are focused at the higher levels of a grantee's management or authority. To be consistent with the OAA section 514(d)(4)(B), this determination will be made on a case-by-case basis regardless of what party identifies the alleged fraud or criminal activity.

§ 641.460 How will the Department examine the responsibility of eligible entities?

The Department will conduct a review of available records to assess each applicant's overall fiscal and administrative ability to manage Federal funds. The Department's responsibility review may consider any available information, including the organization's history with regard to the management of other grants awarded by the Department or by other Federal agencies. (OAA sec. 514(d)(1) and (d)(2)).

§ 641.465 Under what circumstances may the Department reject an application?

(a) The Department may question any proposed project component of an application if it believes that the component will not serve the purposes of the SCSEP program. The Department may reject the application if the applicant does not submit or negotiate an acceptable alternative.

(b) The Department may reject any application that the Grant Officer determines unacceptable based on the content of the application, rating score, past performance, fiscal management, or any other factor the Grant Officer believes serves the best interest of the program, including the application's comparative rating in a competition.

§ 641.470 What happens if an applicant's application is rejected?

(a) Any entity whose application is rejected in whole or in part will be provided a timely notice as well as an explanation, or debriefing, of the Department's basis for its rejection. Notifications will include an explanation of the Department's decision and suggestions as to how to improve the applicant's position for future competitions.

(b) Incumbent grantees will not have an opportunity to cure in an open competition because that will create an inequity in favor of incumbents which already have opportunities to correct deficiencies through technical assistance, provided by the Department, under OAA sec. 514(e)(2)(A).

(c) If the Administrative Law Judge (ALJ) rules that the organization should have been selected, in whole or in part, and the organization continues to meet the requirements of this part, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the slots which are the subject of the ALJ's decision will be awarded, in whole or in part, to the organization and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees and the operational needs of the SCSEP. The Grant Officer must return the decision to the ALJ for review. In the event that the Grant Officer determines that it is not feasible, the successful appellant will be awarded its bid preparation costs or a pro rata share of those costs if Grant Officer's finding applies to only a portion of the funds that would be awarded to the successful appellant. An applicant so selected is not entitled to the full grant amount but will only receive the funds remaining in the grant that have not been expended by the current grantee through its operation of the grant and its subsequent closeout. The available remedy in an SCSEP non-selection appeal is the right to be selected in the future as an SCSEP grantee for the remainder of the current grant cycle. Neither retroactive nor immediately effective selection status may be awarded as relief in a non-selection appeal under this section and § 641.900.

Any organization selected and/or funded as an SCSEP grantee is subject to having its slots reduced or to being removed as an SCSEP grantee of an ALJ decision so orders. The Grant Officer provides instructions on transition and closeout to both the newly designated grantee and to the grantee whose slots are affected or which is being removed. All parties must agree to the provi-

sions of this paragraph as a condition of being an SCSEP grantee.

§ 641.480 May the Governor make recommendations to the Department on grant applications?

(a) Yes, each Governor will have a reasonable opportunity to make comments on any application to operate a SCSEP project located in the Governor's State before the Department makes a final decision on a grant award. The Governor's comments should be directed to the Department and may include the anticipated effect of the proposal on the overall distribution of program positions within the State; recommendations for redistribution of positions to underserved areas as vacancies occur in previously encumbered positions in other areas; and recommendations for distributing any new positions that may become available as a result of an increase in funding for the State. The Governor's recommendations should be consistent with the State Plan.

(b) Under noncompetitive conditions, the Governor may make the authorized recommendations on all applications. However, under competitive conditions, the Governor has the option of making the authorized recommendations on all applications or only on those applications proposed for award following the rating process. It is incumbent on each Governor to inform the Department of his or her intent to review the applications before or after the rating process.

§ 641.490 When may SCSEP grants be awarded competitively?

(a) The Department must hold a competition for SCSEP funds when a grantee (national grantee, national grantee in a State, or State grantee) fails to meet its performance measures; the eligibility requirements; or the responsibility tests established by section 514 of the OAA.

(b) The Department may hold a full and open competition before the beginning of a new grant period, or if additional grantees are funded. The details of the competition will be provided in a Solicitation for Grant Applications published in the FEDERAL REGISTER or in another medium. The Department